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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/593,664

09/20/2006

Jorg Meissner

66250(70301)

2801

21874 7590 03/21/2011
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EXAMINER

SWINEHART, EDWIN L

ART UNIT

PAPER NUMBER

3617

MAIL DATE

DELIVERY MODE

03/21/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/593,664

Applicant(s)

MEISSNER, JORG

Examiner

ED SWINEHART

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 15,16,34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Buck and Weingarten.

Jones discloses the claimed invention with exception of the buoyant beads, and a cover to secure the zipper handle. Provided are a size variable element which is adjustable to the body size of the wearer, and includes buoyancy elements **19** made of sheets of foam. A first closure element **23** can be used to set the proper size of the element, while a second zipper closure element can be released without altering the first.

Buck teaches the construction of a PFD from buoyant beads instead of sheets of foam.

Weingarten teaches a zipper handle cover.

It would have been obvious to one of ordinary skill in the art at the time of the invention to form the buoyant elements **19** of Jones from beads as taught by Buck.

Such a combination would have been desirable so as to provide for increased flexibility of the garment.

It would further have been obvious to one of ordinary skill in the art at the time of the invention to provide a cover for the zipper handle of Jones as taught by Weingarten.

Such a combination would have been desirable so as to provide for the relief of parting stress at the top of the zip fastener and thereby prevent undesired opening.

3. Claims 15-18,16,21-24,28,29 and 32-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kea in view of Buck and Weingarten.

Kea discloses the claimed invention with exception of buoyant beads and zipper handle cover. Provided are a size variable element which is adjustable to the body size of the wearer, and includes buoyancy elements **32**. A first closure element **17,18** can be used to set the proper size of the element, while a second closure element can be released without altering the first.

Buck is applied as above.

Weingarten is applied as above.

Re claims 17,18,28 and 29, Kea suggests the interchangeability of fastener types, but fails to specifically mention that the lateral straps as including VELCRO®.

It would have been obvious to the ordinary routineer working in the art at the time of the invention to substitute recognized equivalent fastener types. In this instance, substitution of VELCRO® tape as is old and well known in the art for the lateral strapping of Kea would have been an obvious choice of design.

While there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness, “the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can

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take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”” *KSR Int’l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007).

“When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.”

Id., at 1740, 82 USPQ2d at 1396. We must ask whether the improvement is more than the predictable use of prior art elements according to their established functions.

Id.

Re claim 18, “towards the back” denotes no specific structure and/or arrangement so as to define over the lateral positioning as shown by Kea.

4. Claims 19-21,30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Buck and Weingarten as applied against claims 15 and 16 above, and further in view of Samano.

Jones fails to show an adjustment for the arm opening/ shoulder area.

Samano teaches such adjustment straps **2**.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide adjustability in the shoulders of Jones as taught by Samano.

Such a combination would have been desirable so as to provide for accommodating users of various sizes.

Re claim 20, VELCRO® is a recognized equivalent to the strap fasteners of Samano, and substitution of one for the other would have been well within the level of skill of the ordinary routineer working in the art at the time of the invention, providing results as would be expected.

5. Applicant's arguments filed 1/21/2011 have been fully considered but they are not persuasive.

Applicant argues that none of the prior art secures the zip handle against accidental opening of a swimming aid device.

6. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's arguments re the first closure of Jones have been addressed in previous office actions, and such responses are incorporated herein by reference.

In response to applicant's argument that Weingarten is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both the device of Weingarten and that of the present invention are garments with zippers. Weingarten is analogous art.

Applicant argues that the flap of Weingarten shields the zipper pull tab from being fouled with ice, dirt or foreign matter, and therefore does not provide for a safety concept against accidental opening.

The flap of Weingarten is a one-for-one equivalent as that of the present invention, such being notoriously old in the art. Such a flap will prevent accidental opening exactly as does the present invention.

Applicant argues that Kea is not a swimming aid device, as such only provides floatability in case of emergency.

It generally can be assumed, that a person wearing the floatation device of Kea may desire to swim towards safety. The mere fact that the device of Kea maintains a wearer afloat therefore “aids” in this effort.

Applicant further argues that inflatable bladders are necessary buoyant elements in the garment of Kea.

The examiner does not understand this argument, as such bladders were not removed by the combination of references.

Applicant argues that the VELCRO fastener **19** of Kea is not a zipper.

The examiner agrees, however, such is not how Kea was applied against the claims. The examiner clearly indicated in the rejection what Kea was lacking, and a zipper was not mentioned, therefore, Kea teaches a zipper. Note the last paragraph of the specification which sets forth that the VELCRO may be replaced by a zipper.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ed Swinehart whose telephone number is 571-272-6688. The examiner can normally be reached on Monday and Wednesday through Friday 6:30 am to 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ed Swinehart/
Primary Examiner
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